

CHAPTER 2
CONTRACTING OUT DEPARTMENT OF HUMAN SERVICES
EMPLOYEES AND PROPERTY

PREAMBLE

In certain circumstances the department of human services has determined it to be permissible to enter into contracts with service providers (contractors) for the use of department employees in a service program or the use of buildings and grounds of state institutions. These rules describe the conditions and processes under which these contractual arrangements will operate and will ensure uniform procedures on all campuses regarding the contracting out of department employees and leasing of state campus buildings and grounds. These rules do not supersede existing policies regarding the sharing of department employees with other state agencies under the authority of the Iowa department of personnel. The department shall implement procedures consistently.

441—2.1(23A,225C) Definitions.

“Contract manager” is the person identified within the department of human services, division of administration, who will act as the central point of contact regarding all use and leasing of state institution buildings and grounds.

“Contractor” means a nonprofit entity as defined by Iowa Code chapter 504A that purchases the services of the department, including department employees, to be used to supplement its own service provision.

“Department” means the Iowa department of human services.

“Division” includes the divisions of mental health and developmental disabilities; and adult, children and family services.

“Lessee” means a nonprofit provider of services or other approved activity or other nonprofit entity as defined by Iowa Code chapter 504A that has been permitted to lease space in certain buildings or grounds on one or more of the mental health institutes, state hospital schools, the Iowa Juvenile Home at Toledo, Iowa, or the State Training School at Eldora, Iowa, from the department.

“State institutions” (also referred to as campuses), for the purposes of this chapter, include: the Glenwood and Woodward state hospital-schools; the Cherokee, Clarinda, Independence, and Mt. Pleasant mental health institutions; the Iowa Juvenile Home in Toledo; and the State Training School in Eldora.

“Superintendents” are the administrators of these state institutions as defined by Iowa Code chapter 218 as well as those administrators appointed by the director of the department of human services pursuant to Iowa Code chapters 233A and 233B at the Iowa Juvenile Home in Toledo and the State Training School in Eldora.

441—2.2(23A,225C) Contracts for use of the services of department employees. All determinations regarding whether the department shall enter into a contract for services shall be made by the director of the department or designee. All determinations are considered final and binding and are not subject to appeal. The director of the department or designee shall weigh the following criteria in making the decision.

2.2(1) *Expertise.* Department employees shall possess certain expertise and skills needed by a contractor.

2.2(2) *Mutual benefit.* There shall be a mutual benefit to the department and the contractor.

2.2(3) *Payment.* Payment for the full cost, both direct and indirect, of department employees shall be received from the contractor.

2.2(4) *Supplementation of services.* The intent of the department is to permit its employees to provide services to on-campus lessees. Department employees may supplement the direct service provided by the contractor, but department employees shall not assume full responsibility for the care and treatment of consumers of services of the contractor.

2.2(5) *Use of department employees.* Department employees shall not be used to fill vacancies of full-time staff positions of the contractor, nor can the full time of a single department employee be contracted to a single contractor. For time-limited periods, and when it is in the best interest of the state, a state institution, with approval of the director of the department and the director of the Iowa department of personnel, may contract to provide department employees to a contractor on a full-time basis.

2.2(6) *Nonprofit status.* Department employees shall only be contracted out to nonprofit entities as defined by Iowa Code chapter 504A.

2.2(7) *Conflict of interest.* A contract shall not be entered into if it creates a conflict of interest as defined by Iowa and federal law for either the department employees, the department in general, the state of Iowa, or the contractor.

2.2(8) *Services to department clients.* Department employees' time shall be made available to a potential contractor only if it can be done without harm to the department's institution clients who are receiving services on an inpatient or outpatient basis.

2.2(9) *Subcontracting.* The department shall not subcontract out the time or services of a person under contract to the department. Persons who perform services as independent contractors to the state of Iowa, pursuant to a personal services contract, shall not be included in any agreement entered into pursuant to this chapter. However, this does not prohibit an independent contractor from directly entering into a contractual relationship with a contractor.

441—2.3(23A,225C) Contract provisions. A contract for service entered into pursuant to this chapter shall include the following provisions, plus other provisions as determined by the director of the department or designee:

2.3(1) *Rate setting.* All contract rates will be set by the department. The contract shall cover the full costs of the department including, but not limited to, any base salary or wage, vacation, applicable leave, and other fringe benefits paid for by the state of Iowa at the time of the contract and any subsequent increases.

2.3(2) *Collective bargaining agreements.* If the department employees to be included in the contract are covered by a collective bargaining agreement, the contractor shall be bound by the applicable collective bargaining agreement. The contractor shall further agree that any decision relative to the collective bargaining agreement between the department and its employees shall be binding on the contractor. Should any provision of the agreement between the parties be found to violate the terms and conditions of an applicable collective bargaining agreement, the provision or condition contained in the agreement entered into pursuant to this chapter shall be void.

2.3(3) Conditions of employment. The contract shall not impose any conditions of employment outside of those conditions of employment currently imposed by the state of Iowa.

2.3(4) Liability. The contractor agrees to defend, indemnify, and hold harmless the state and the department against all claims, damages, losses, costs, and expenses, including attorney fees, arising out of any services performed pursuant to an agreement entered into under this chapter.

2.3(5) Private contracting. A department employee covered by an agreement entered into pursuant to this chapter shall be prohibited from contracting privately with the same contractor.

2.3(6) Conditions. All contracts must comply with conditions and negotiations mutually agreed upon by the department and the Iowa department of personnel.

2.3(7) Term of contract. Contracts shall be for a specific term and shall be cosigned by the department and the Iowa department of personnel on behalf of the state of Iowa and by the contractor.

2.3(8) Copies of contract. Copies of the contract shall be maintained by the respective division, the business office of the respective campus, and the contractor.

2.3(9) Program name. Without the prior written approval of the director, the entity seeking to contract with the state shall not use or cause to be used a name for the program or project that is in any way similar to the name or part of the name of the institution.

441—2.4(23A,225C) Leasing of space at state institutions. All determinations regarding leasing space at state institutions shall be made by the director of the department or designee. All determinations are considered final and binding and are not appealable. The director of the department or designee shall weigh the following criteria in making the determination.

2.4(1) Available space. Space shall be available on one or more of the campuses.

2.4(2) Activities. Lessees may not engage in activities that will interfere with, impede, or conflict with the basic treatment, habilitation, or care programs operated on the campuses by the department. Lessees may not engage in activities that will endanger or otherwise threaten the safety and well-being of department consumers of services, the community at large, or department employees.

2.4(3) Nonprofit status. Lessees must be public or private nonprofit entities as defined by Iowa Code chapter 504A and must provide documentation of nonprofit status upon request of the department.

2.4(4) Needs and priorities. Needs of the residents of Iowa shall be considered before needs of the residents of other states. Needs shall be prioritized as follows:

- a. Needs of the department other than current occupancy and use.
- b. Needs of other state or local governmental bodies for human or social service related purposes that benefit Iowans before citizens of other states.
- c. Needs of other state or local governmental bodies for other than human or social service related purposes.
- d. Needs of private, nonprofit entities for human or social service related purposes.
- e. Needs of private, nonprofit entities for other than human or social service related purposes that are determined to be compatible uses of state institution buildings and grounds.

2.4(5) Services. Lessees must use the leased premises to provide disability services or other services normally delivered by the lessee.

441—2.5(23A,225C) Requirements prior to leasing. The following shall be required prior to the leasing of campus buildings or grounds.

2.5(1) Referral to contract manager. A campus superintendent may show available space to a potential lessee but has no authority to approve any leasing arrangements or to commit buildings or grounds to potential lessees. Superintendents shall notify the contract manager if contacted by a potential lessee. If space is available or expected to be available on the campus, the superintendent shall direct all entities interested in pursuing lease arrangements to write the contract manager in the department's central office.

2.5(2) Written proposal. The potential lessee shall submit a written program proposal to the contract manager that contains, at a minimum, the following information:

a. A brief history and description of the business operations of the potential lessee, including documentation of nonprofit status if needed.

b. Details regarding the proposed usage of the leased space or grounds.

c. If the proposal is to lease space for office use, the information submitted shall include the type of business to be conducted in the leased space, the proposed number of employees to be housed in the space, the expected hours of operation, and the numbers and types of persons expected to use the office for business purposes.

d. If the proposal is to provide either residential or nonresidential treatment, habilitation, care or educational services in the leased space, the information submitted shall include a detailed program description specifying the age, numbers and types of persons to be served, the habilitation or treatment modalities to be used, including the guidelines for admission to service, and the anticipated referral sources (e.g., other institutions, courts, persons from Iowa or other states).

e. If the proposal is to provide either residential or nonresidential treatment, habilitation, care or educational services, written documentation of all applicable approvals, certifications, accreditations, or licenses that authorize the potential lessee to provide the proposed service shall be submitted. Failure to obtain or maintain legally required approvals, certifications, accreditations, or licenses shall prevent the development of or cause the termination of lease agreements. Temporary leasing arrangements may be considered if deemed necessary in order for the lessee to receive the needed documentation per the above.

f. A description of the potential lessees' service and support expectations of the department such as whether department employees will be needed to assist the program and what arrangements the lessee intends to make for services such as janitorial, laundry, and food services.

g. Identification of proposed renovations that will be needed in order for the lessee to carry out its proposed activities. The lessee shall propose how and by whom the renovations would be completed. The lessee shall be responsible for the full cost involved in all renovations, and all renovations must comply with applicable federal, state, and local requirements including, but not limited to, the Americans With Disabilities Act, and health, safety, and fire codes.

h. Verification of terms and conditions that allow the department to have a cost-neutral lease (rent must cover expenses).

i. Other information deemed necessary by the contract manager.

2.5(3) *Evaluation of proposals.* The contract manager, in collaboration with the respective division administrator and the respective superintendents, shall evaluate all proposals to determine if they meet the general principles identified above. The contract manager shall recommend whether to proceed with the leasing process to the director or designee. The contract manager shall notify the potential lessee in writing of the director's or designee's decision and, if applicable, identify the reasons for denial. All decisions are considered final and binding and are not subject to appeal.

2.5(4) *Indemnity and insurance.* All contracts shall include clauses that address the following:

a. All contractors shall indemnify, hold harmless and defend the state, the department, and its officers and employees from and against all suits, actions, or claims for personal injury or death, or damage to property because of any act, omission or neglect of the contractor, its officers, agents or employees in the provision of services or other activities as provided for by administrative rule and contracts developed pursuant to this chapter, including, but not limited to:

(1) Personal injury, death or property damage of a client receiving care or services, or while on a premises owned, leased or operated by the contractor, or while being transported by the provider, either directly or by arrangement.

(2) Personal injury, death or property damage of another caused by a client while receiving care or services from the contractor.

This provision does not create any right or cause of action in the public or a third party to bring a claim or suit under or pursuant to its terms.

b. The contractor agrees that it shall have in force and effect a liability insurance policy covering all its operations in providing the care and services required by the administrative rules and by contract, including the indemnity provision above. A "Certificate of Insurance" identifying the insurance company, the policy period, the type of policy and the limits of coverage shall be filed with the department. The insurance policy and the certificate of insurance shall show the state of Iowa and the department of human services as additional named insured. The contractor further agrees that anyone transporting, or authorized to transport, clients in privately owned vehicles shall have liability insurance in force and effect covering any claim which may arise from this transport.

2.5(5) *Request for proposal.* When only one party is expressing interest in leasing space, the department, before entering into a lease agreement, shall review the proposal and determine whether the proposal and use of the space requires the department to publish a request for proposal in lieu of executing a lease between the parties. If it is determined that publishing a request for proposal is needed, the proposed lessee can then respond to the request for proposal.

2.5(6) *Program name.* Without the prior written approval of the director, the entity seeking to contract with the state shall not use or cause to be used a name for the program or project that is in any way similar to the name or part of the name of the institution.

These rules are intended to implement Iowa Code sections 23A.2 and 225C.13.

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